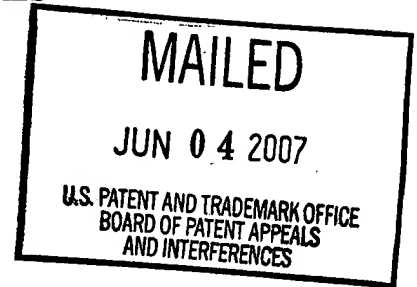


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte: KENNETH D. SIMONE, JR.

Application No. 09/658,298



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

The Board of Patent Appeals and Interferences (Board) electronically received this application on January 31, 2007. The application is not ready for review and consideration by the Board for the reasons noted below. Accordingly, the application is herewith being returned to the Examiner to take action consistent with the guidance provided by this order.

**BACKGROUND**

On August 14, 2006, Appellant filed an Appeal Brief in response to the Final Rejection Mailed March 14, 2006. In response, the Office mailed an Examiner's Answer on October 25, 2006. On November 6, 2006, the Patent Appeal Center mailed a Notification of Non-Compliant Appeal Brief (Notification) indicating that the Appeal Brief was defective. Appellant filed a Response To Notification of Non-Compliant Appeal Brief, including an amended Appeal Brief, on December 5, 2006.

There is no indication on the record that the Examiner determined whether Appellant's amended Appeal Brief complies with 37 CFR § 41.37(c) in light of the Notification of Non-

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Compliant Appeal Brief mailed November 6, 2006.

**CONCLUSION**

Accordingly, it is

**ORDERED** that the application is returned to the Examiner for appropriate action on the following:

- 1) to vacate the Examiner's Answer mailed October 25, 2006;
- 2) to determine whether Appellant's amended Appeal Brief of December 5, 2006 complies with 37 CFR § 41.37(c); and
- 3) to notify Appellant of the Examiner's consideration, consistent with Office policy.

BOARD OF PATENT APPEALS  
AND INTERFERENCES



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